

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 16 of 1989

in

SPECIAL CIVIL APPLICATION No 253 of 1987

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

GUJARAT STATE FINANCIAL CORPN.

Versus

KUMARPAL V. SHAH

Appearance:

MR V.B. Patel, Senior Counsel, with Mr. DG CHAUHAN
for Appellant

Mr.Kumarpal V. Shah, Respondent No.1-
PARTY-IN-PERSON.

M/S TRIVEDI & GUPTA for Respondent No. 2

MR RP BHATT for Respondent No. 3

Ms. P.J. Davawala, for Respondent No. 4

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

Date of decision: 11/05/99

ORAL JUDGEMENT: (Per R.K. Abichandani, J.)

The appellant, Gujarat State Financial Corporation, challenges the judgment and order dated 29th November, 1988, passed by a learned Single Judge in Special Civil Application No.253 of 1987, allowing the petition and directing the appellant-Corporation to pay the residue of the money received by it, with interest at the rate of 12% per annum to the petitioner, by sale of the factory, named "R.K. Textiles", owned by the original petitioner. It was directed that the Corporation shall finalize the accounts within three months after adjusting Rs.5,13,976.98 Ps. as found due on 15th January, 1982 and by taking into consideration the fact that the Corporation had realized Rs.7,50,000/- by sale of the said factory. It was also directed that the appellant-Corporation shall pay directly to the G.I.D.C. Rs.5,609/- towards its dues as on 15.1.1982. The statement on behalf of the petitioner that he had agreed to pay the amount due to Dena Bank and G.I.I.C. was recorded, with an observation that it would be open for the appellant-Corporation to inform G.I.I.C. and Dena Bank that the petitioner had so agreed.

The petitioner was the owner of a factory, known as "R.K. Textiles" in the G.I.D.C. Estate, Kalol and since he failed to pay the instalments of the loan taken from the appellant-Corporation, the factory came to be sold under Section 29 of the State Financial Corporations Act, 1951 by the appellant-Corporation for an amount of Rs.7,50,000/- to one Lalitkumar R. Chheda in January, 1982. Initially, the purchaser had deposited Rs.2,50,000/- and as per the arrangement between the appellant-Corporation and the purchaser, remaining amount was to be paid within a period of two years. Since the amount due to the respondent-petitioner was not paid to him after settlement of account with the appellant-Corporation, the respondent-petitioner had filed Special Civil Application No.4593 of 1984 and in that matter, notice came to be discharged on 23rd November, 1984, with an observation that the question of issuing suitable directions against the appellant-Corporation for paying residue of the amount of the purchase price to the respondent-petitioner under Section 29(4) of the Act had not arisen at that stage and the claim was premature in view of the statement made on behalf of the appellant-Corporation to the effect that it would take suitable action for recovery of unpaid

instalments by the purchaser. Since the amount was not paid to the respondent-petitioner despite such statement, the petitioner filed the present petition, seeking direction on the appellant-Corporation to pay him the balance of the amount out of the money realized from the sale of the property in question.

The appellant-Corporation contested the petition, contending that as the respondent-petitioner had failed to make payment of the loan, it had exercised its power under Section 29(1) of the said Act and took over the possession of the assets of the petitioner's unit. Thereafter, by issuing an advertisement, the unit was sold on 26.11.1981 to the highest offerer for a sum of Rs.7,50,000/-. As no purchaser was ready to make down payment, the highest bidder was informed to deposit one-third of the amount immediately by the Corporation by its letter dated 4.1.1982 and accordingly, he deposited Rs.2,50,000/- and necessary documents were executed on 15th January, 1982 for payment of the balance amount. Admittedly, the balance amount was treated as if it was a loan advanced to the purchaser, on which interest was payable by the purchaser to the appellant-Corporation. The dues payable by the respondent-petitioner to the appellant-Corporation, inclusive of interest, penal interest, etc., were worked out by the appellant-Corporation at Rs.5,13,976.98Ps. On 15.1.1982, the total outstanding dues of G.I.I.C. Limited from the respondent-petitioner were Rs.76,252.46 Ps. and that of Dena Bank was Rs.54,331.99 Ps. According to the Corporation, it had received, in all, Rs.5,50,000/- from the purchaser and a sum of Rs.6,50,000/- was yet to be recovered. In this background, it was contended that there was no money received beyond the actual payments made by the purchaser and, therefore, there was no question of the respondent-petitioner being paid any residue amount under sub-section (4) of Section 29 of the said Act. The learned single Judge, negating the contention of the appellant-Corporation to the effect that until it received the amount of sale price from the purchaser, the respondent-petitioner continues to be the debtor of the Corporation and was not entitled to recover any amount from the Corporation, held that once the industrial concern is sold, in absence of any contract to the contrary, the Corporation holds the money received by it by sale of the industrial concern in trust and it is required to be applied in the manner provided by sub-section (4) of Section 29 of the Act. It was held that at the time of auction of the respondent-petitioner's property, he had no say in the matter and the Corporation, in exercise of its statutory

right, had sold the property. It was held that by no stretch of imagination could it be said that if the purchaser makes default in paying instalments agreed to by him, the respondent-petitioner would be liable for the same or that the receipt of money from the purchaser was at the risk and cost of the respondent-petitioner. It was held that once the property was sold in auction, the Corporation was entitled to recover the consideration amount from the purchaser and not from the respondent-petitioner. It was held that the argument, that the expression, "money received" in sub-section (4) of Section 29, connoted only the amount which was actually received, was a fallacious one, because once the property was sold by accepting the highest bid for a particular amount, then the transaction was completed and the amount, for which it is sold, can be said to have been received by the Corporation. Subsequently, after the accrual of the amount, the Corporation gave loan facility to the purchaser. That would be at the cost and risk of the Corporation itself.

The learned counsel appearing for the appellant contended before us that the decision of the learned single Judge was against the provisions of Section 29(4) of the said Act. He submitted that there was no question of any residue amount out of Rs.7,50,000/-, for which the property was sold, because, after the sale, the purchaser never paid up the entire amount. Since the purchaser did not pay the amount, it cannot be said that the appellant-Corporation had received the entire money, for which the property was sold. Since full sale price was not received by the appellant-Corporation, there was no question of any residue being available for payment to the respondent-petitioner.

Under Section 29 of the said Act, in the event of default committed by the industrial concern in repayment of any loan or advance or any instalment thereof, there is a right in the Financial Corporation to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. Any transfer of property made by the Corporation in exercise of these powers would vest in the transferee all rights in or to the property transferred as if the transfer were made by the owner of the property as provided by sub-section (2) of Section 29. Sub-section (4) of Section 29, around w...

reads as under :-

"29. Rights of Financial Corporation in case of default.-

... ..

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto...."

From the provisions of Section 29(1), it would appear that right to transfer by way of lease or sale is with a view to realizing the property. In this context, the words "realize the property" would mean "to convert the property into money". The word 'realise' as per Oxford Concise English Dictionary also means "to convert into money". Therefore, the power, which is given to the Corporation, in the event of the default of the industrial concern, is to take over the property and convert it into money by transferring it, inter alia, by sale. There is no provision which authorizes the Corporation to postpone the realization of the money while selling the property. Therefore, when the property is actually sold for an amount of money, it is consideration in respect of the said property. The property is realized and the amount, for which it is sold, would be the money, which is 'received' by the Corporation within the meaning of that expression in sub-section (4) of Section 29. In fact, the appellant-Corporation itself had treated the amount of consideration of Rs.7,50,000/-, for which the property was sold, as 'money received' by it, because, after accepting one-third of that amount, it had treated the rest of it as if it was a loan advanced by the Corporation to the purchaser. Admittedly, on such loan amount, interest was payable by the purchaser to the

Corporation. Thus, when the Corporation itself treated the remaining amount as if it was 'money received' by it, on which, by treating it as a loan advanced to the petitioner it charged interest, it would not lie open in the mouth of the Corporation to say that it had not received the entire consideration of the sale of the unit in question. In the context of the sale that had taken place of the respondent-petitioner's unit for a consideration of Rs.7,50,000/-, out of which a portion was treated as loan to the purchaser, it is clear that the entire consideration should be treated as money received by the Corporation and therefore, under sub-section (4) of Section 29, after deducing and adjusting the costs and charges, etc., under the said provision, in discharge of the debt due to the Financial Corporation, as on the date on which the unit was sold and consideration was realized, the residue of the consideration amount would be payable to the respondent-petitioner. In this view of the matter, we find that the learned single Judge was perfectly justified in directing the appellant-Corporation to pay the residue amount. We are in complete agreement with the reasoning adopted by the learned single Judge in allowing the claim of the respondent-petitioner. The appeal is, therefore, dismissed with no order as to costs.

At this stage, the learned counsel for the appellant-Corporation requests for continuing the interim relief. Having regard to the number of years that the litigation has taken and to the facts and circumstances of the case, there is no warrant for continuing the interim relief. The request is, therefore, rejected.

(apj)